



UNITED STATES PATENT AND TRADEMARK OFFICE

AS
UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
Washington, D.C. 20231
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/674,369	10/27/2000	William F. Aftoora	WEA-1100	6931

7590 12/17/2001

Joseph G Curatolo
Renner Kenner Greive Bobak Taylor & Weber
24500 Center Ridge Road Suite 280
Westlake, OH 44145

EXAMINER

PRATT, HELEN F

ART UNIT	PAPER NUMBER
----------	--------------

1761

DATE MAILED: 12/17/2001

Please find below and/or attached an Office communication concerning this application or proceeding.

8N-6

Office Action Summary	Applicati n N . 09/674,369	Applicant(s) AFTOORA, WILLIAN F.	
	Examin r Helen F. Pratt	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with th correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2000 .
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21 is/are pending in the application.
 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
 If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 a) ☐ All b) ☐ Some * c) ☐ None of:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
 * See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
 a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4, 6, 14, 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Canton.

Canton discloses a solid composition containing a bicarbonate, a binder (corn starch) which does not contain an acidulent (col. 5, lines 40-55). The composition is considered to reduce the acid as it contains a bicarbonate, which is known to be a neutralizing agent. Claims 1, 2, 3 differ from the reference in that it is a liquid product. However, "There is no invention in merely changing the shape or form of an article without changing its function except in a design patent." *Eskimo Pie Corporation v. John Levous and Purity Ice Cream Co.* 35 F(2nd)120. Also "Variations of old compositions which do no more than serve their known and expected effect in the mixture have long been held to be un inventive and unpatentable." *In re Levin et al.* 634 O.G. 7, 1950 C.D.101, *In re Denning*, 513 O.g.3, *RUDD V. Kinsland*, 88 USPQ 418. Nothing new or unobvious is seen in the composition in the liquid form as opposed to the solid form. Therefore, it would have been obvious to make a product in a liquid form, which only involves adding water, as the composition is the same except for the water.

Art Unit: 1761

Claim 4 further requires a preservative and claim 6 particular amounts. However, sodium benzoate and potassium sorbate are well known preservatives and nothing new is seen in their use. Therefore, it would have been obvious to use known preservatives in the claimed composition.

Claims 14 and 15 are to a method and further require mixing with a beverage. Canton discloses a composition which is mixed with a hot coffee beverage. Therefore, it would have been obvious to mix with a beverage.

Allowable Subject Matter


Claims 20 and 21 allowed.

^{7, 13, 16-19}
Claims 5, 7-19 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Helen F. Pratt whose telephone number is 703-308-1978. The examiner can normally be reached on Monday to Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Milton Cano, can be reached on (703) 308-3959. The fax phone number for the organization where this application or proceeding is assigned is 703-305-7718.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0651. hp 12-14-01


HELEN PRATT
PRIMARY EXAMINER